

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

MARIA ARTEGA, MOISÉS RINCÓN,  
TERESA RODRIGUEZ, AND JORGE RUIZ, §  
§

Plaintiffs, §  
§

VS. §  
§

AQUA FINANCE, INC, GREEN SKY LLC, §  
TRUIST BANK FKA SUNTRUST BANK, §  
CONNEXUS CREDIT UNION, §  
APOLLOTEK INTERNATIONAL INC., §  
AND SPACE WATER SYSTEMS, LLC §  
§

Defendants. §  
§

United States Courts  
Southern District of Texas  
FILED

*April 22, 2021*

Nathan Ochsner, Clerk of Court

**CIVIL ACTION NO. 1:20-CV-00026**

**DEFENDANT GREENSKY LLC'S ORIGINAL CROSS CLAIM AGAINST  
DEFENDANT SPACE WATER SYSTEMS, LLC**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant GreenSky LLC (“GreenSky”), files this Original Cross Claim against Defendant Space Water Systems, LLC and would respectfully show the following:

**A. PARTIES**

1. GreenSky is a foreign corporation that had been sued and entered an appearance in this lawsuit.

2. Defendant Space Water Systems, LLC (“Space Water”) is a limited liability company with its principal place of business in Houston, Texas that has been sued and entered an appearance in this lawsuit.

**B. JURISDICTION AND VENUE**

3. Jurisdiction is proper in this Court, as all claims asserted exceed the minimum jurisdictional limits of this Court.

4. Venue is proper in the United States District Court, Southern District, Brownsville Division under U.S.C. § 1964, because all or a substantial part of the events or omissions giving rise to the claims asserted in this lawsuit occurred in Cameron and Hidalgo County, Texas, and the claims involve transactions that occurred in this district.

### **C. FACTUAL BACKGROUND**

5. In this lawsuit, Plaintiffs Maria Arteaga, Moisés Rincón, Teresa Rodriguez and Jorge Ruiz (collectively “Plaintiffs”) allege that they contracted with Space Water and/or Apollotek International Inc. (“Apollotek”) for the installation of a home water filtration system. According to Plaintiffs’ allegations in this lawsuit, Space Water and Apollotek made a number of misrepresentations to Plaintiffs concerning the cost and financing of the home filtration system.

6. GreenSky provided financing for the installation of the water filtration system that Space Water installed at Jorge Ruiz’s home, which is the subject of his claims in this lawsuit. The claims against GreenSky are based on and arise out of the transaction and dispute with Space Water regarding the alleged misrepresentations of Space Water.

### **D. INDEMNITY CLAIM**

7. Prior to the transaction between Space Water and Jorge Ruiz, Space Water and GreenSky entered into a Merchant Program Agreement (the “Agreement”) in which Space Water was allowed to participate as a merchant in GreenSky’s financing program. The transaction between Space Water and Jorge Ruiz was financed pursuant to the Agreement.

8. The Agreement includes an indemnity provision pursuant to which Space Water (designated in the Agreement as “Merchant”) has agreed to defend, indemnify and hold GreenSky harmless from any and all claims arising, in whole or in part, from the acts and omissions of Space Water. Specifically, Section 25(a) provides as follows:

**“(a) Merchant shall indemnify, defend (at Merchant’s sole expense and with counsel reasonably acceptable to Program Administrator acting on behalf of, and at the direction and under the control of, Funding Participants), and hold harmless Program Administrator and any Funding Participant that funds or owns a Loan (or the economic rights thereto) to a customer of Merchant (and their respective officers, directors, shareholders, members, partners, managers, employees, representatives and agents) (each an “GreenSky Program Indemnified Person”) from and against any and all losses, claims, investigations, litigation, proceedings, liabilities, damages, administrative charges, and expenses (including attorney’s fees) of any kind whatsoever (collectively a “Loss”) directly or indirectly arising out of or related to Merchant’s breach of any obligation owed to Program Administrator or any third party, including: (i) breach of any representation, warranty or covenant of Merchant contained in the Agreement, including the Merchant Program Agreement Compliance Addendum attached hereto; (ii) failure of Merchant to comply with any applicable federal, state, or local law, rule, regulation or ordinance; (iii) any Loss sustained by or threatened against any GreenSky Program Indemnified Person attributable in whole or in part to negligence, fraud, errors (whether negligent or not), omission or misconduct of Merchant, its employees, subcontractors, representatives or agents; (iv) any Loss sustained by or threatened against any GreenSky Program Indemnified Person by reason of, or attributable in whole or in part to, Merchant’s failure to perform any of its obligations, or discharge any of its responsibilities, to any person, including failure to pay Transaction Fees due; and (v) any defect in any Offerings sold or provided by Merchant, or any breach of any express or implied warranty in connection with such Offerings; and (vi) any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; provided that Merchant shall have no obligations or liability under this Section 25(a) to the extent a Loss results solely from the gross negligence or willful misconduct of a GreenSky Program Indemnified Person. Merchant further agrees to reimburse each GreenSky Program Indemnified Person upon demand for all legal and other expenses (including expenses related to investigation, settlement, compromise or satisfaction) incurred by any such GreenSky Program Indemnified person in connection with any of the foregoing.”**

9. As reflected in the quoted language, the Agreement requires Space Water to defend and indemnify GreenSky for any losses sustained *in whole or in part* due to the conduct of Space Water. The allegations pled in the Complaint make it very clear that Plaintiffs’ claims against GreenSky stem, in whole or in part, from Space Water’s conduct. As a result, Space Water has a

contractual duty to defend and to indemnify GreenSky with respect to all of Plaintiffs' claims in this lawsuit.

10. Pursuant to the Agreement, and any other applicable statutory or common law bases for indemnity, GreenSky is entitled to be fully indemnified by Space Water for all sums GreenSky may be required to pay to Plaintiffs and any losses of any nature incurred in connection with Plaintiffs' claims against Green Sky in this lawsuit.

11. GreenSky would further show that it has been required to retain the undersigned counsel to defend GreenSky in connection with the claims asserted by Plaintiffs in this lawsuit, and that GreenSky is entitled to recover the reasonable attorneys' fees and costs it has incurred and will incur in its defense against Plaintiffs' claims from Space Water, including such fees and costs that may be incurred in connection with any future appeals.

#### **E. CONTRIBUTION CLAIM**

12. GreenSky asserts it is not responsible for any damages alleged by Plaintiffs in this lawsuit. However, in the unlikely event that Plaintiffs should prevail on their claims against GreenSky, and in the unlikely event GreenSky is found liable for any damages alleged by Plaintiffs, GreenSky is entitled to contribution from Space Water toward any liability that may be found to exist from GreenSky to Plaintiffs as a result of the conduct asserted in this lawsuit. GreenSky would show that the acts and/or omissions of Space Water were the direct, proximate, and/or producing cause of any damages complained of by Plaintiffs. Accordingly, GreenSky is entitled to contribution from Space Water for the percentage of proportionate responsibility assigned to Space Water by the trier of fact.

#### **F. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant/ Cross-Plaintiff GreenSky, LLC respectfully prays that the judgment be rendered against Defendant/ Cross-Defendant Space Water Systems, LLC, as follows:

- a. Indemnity for all sums GreenSky may be required to pay to Plaintiffs as a result of the claims asserted by Plaintiffs in this lawsuit;
- b. Reasonable and necessary attorneys' fees and costs incurred by GreenSky in defending itself against Plaintiff's claims in this lawsuit, including any such fees and costs on appeal;
- c. Reasonable and necessary attorneys' fees and costs incurred by GreenSky in pursuing its indemnity claims against Space Water in this lawsuit, including any such fees and costs on appeal;
- d. Prejudgment interest at the legal rate as provided by applicable law;
- e. Post-judgment interest at the legal rate as provided by applicable law;
- f. Contribution from Space water for the percentage of proportionate responsibility assigned to Space Water by the trier of fact; and
- g. Any other further relief of any nature to which GreenSky may be justly entitled.

Respectfully submitted,

By: /s/ Sean W. Fleming

**Sean W. Fleming**

*Attorney in Charge*

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**ATTORNEYS FOR DEFENDANT**

**GREENSKY, LLC**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on the 25th day of March, 2021, a copy the undersigned spoke with counsel for Plaintiffs, and counsel for Plaintiffs indicated that she was not opposed to relief sought in this motion.

/s/ Sean W. Fleming  
Sean W. Fleming

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 25th day of March, 2021, a copy of the foregoing pleading was forwarded to all counsel of record through the Court's e-filing system in compliance with the Federal Rules of Civil Procedure.

/s/ Sean W. Fleming  
Sean W. Fleming